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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11
12 MICHAEL ROCCA,

13 Plaintiff,

14 vs.

15 OFFICE DEPOT, INC. dba OFFICE
16 DEPOT #818; WOSK LEVIN
17 COMPANY, LLC,
18 Defendants.

19 } No. '14CV1379 CAB JLB

20 } **Plaintiff's Complaint**

I. SUMMARY

1. This is a civil rights action by plaintiff Michael Rocca (“Rocca”) for discrimination at the building, structure, facility, complex, property, land, development, and/or surrounding business complex known as:

Office Depot #818
909 Morena Boulevard
San Diego, CA 92110
(referred to hereinafter as “the Store”)

2. Rocca seeks damages, injunctive and declaratory relief, attorney fees and costs pursuant to the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 et seq.) and related California statutes against: Office Depot, Inc. dba Office Depot #818; and, Wosk Levin Company, LLC (hereinafter collectively referred to as “Office Depot”).

II. JURISDICTION

3. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343 for ADA claims.

4. Supplemental jurisdiction for claims brought under parallel California law—arising from the same nucleus of operative facts—is predicated on 28 U.S.C. § 1367.

5. Rocca’s claims are authorized by 28 U.S.C. §§ 2201 and 2202.

III. VENUE

6. All actions complained of herein take place within the jurisdiction of the United States District Court, Southern District of California, and venue is invoked pursuant to 28 U.S.C. § 1391(b), (c).

IV. PARTIES

7. Office Depot owns, operates, and/or leases the Store, and consists of a person (or persons), firm, and/or corporation.

11. Rocca was also deterred from visiting the Store because he knew that the Store's goods, services, facilities, privileges, advantages, and accommodations were unavailable to physically disabled patrons (such as himself). He continues to be deterred from visiting the Store because of the future threats of injury created by these barriers.

12. Rocca also encountered barriers at the Store, which violate state and federal law, but were unrelated to his disability. Nothing within this complaint, however, should be construed as an allegation that Rocca is seeking to remove barriers unrelated to his disability.

13. Office Depot knew that these elements and areas of the Store were inaccessible, violate state and federal law, and interfere with (or deny) access to the physically disabled. Moreover, Office Depot has the financial resources to remove these barriers from Office Depot (without much difficulty or expense), and make the Store accessible to the physically disabled. To date, however, Office Depot refuses to either remove those barriers or seek an unreasonable hardship exemption to excuse non-compliance.

14. At all relevant times, Office Depot has possessed and enjoyed sufficient control and authority to modify the Store to remove impediments to wheelchair access and to comply with the Americans with Disabilities Act Accessibility Guidelines and Title 24 regulations. Office Depot has not removed such impediments and has not modified the Store to conform to accessibility standards.

VI. FIRST CLAIM

Americans with Disabilities Act of 1990

Denial of “Full and Equal” Enjoyment and Use

15. Rocca incorporates the allegations contained in paragraphs 1 through 15 for this claim.

1 16. Title III of the ADA holds as a “general rule” that no individual shall
2 be discriminated against on the basis of disability in the full and equal enjoyment
3 (or use) of goods, services, facilities, privileges, and accommodations offered by
4 any person who owns, operates, or leases a place of public accommodation. 42
5 U.S.C. § 12182(a).

6 17. Office Depot discriminated against Rocca by denying “full and
7 equal enjoyment” and use of the goods, services, facilities, privileges or
8 accommodations of the Store during each visit and each incident of deterrence.

9 Failure to Remove Architectural Barriers in an Existing Facility

10 18. The ADA specifically prohibits failing to remove architectural
11 barriers, which are structural in nature, in existing facilities where such removal
12 is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term “readily
13 achievable” is defined as “easily accomplishable and able to be carried out
14 without much difficulty or expense.” *Id.* § 12181(9).

15 19. When an entity can demonstrate that removal of a barrier is not
16 readily achievable, a failure to make goods, services, facilities, or
17 accommodations available through alternative methods is also specifically
18 prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

19 20. Here, Rocca alleges that Office Depot can easily remove the
20 architectural barriers at Store without much difficulty or expense, and that Office
21 Depot violated the ADA by failing to remove those barriers, when it was readily
22 achievable to do so.

23 21. In the alternative, if it was not “readily achievable” for Office Depot
24 to remove the Store’s barriers, then Office Depot violated the ADA by failing to
25 make the required services available through alternative methods, which are
26 readily achievable.

1 Failure to Design and Construct an Accessible Facility

2 22. On information and belief, the Store was designed or constructed (or
3 both) after January 26, 1992—independently triggering access requirements
4 under Title III of the ADA.

5 23. The ADA also prohibits designing and constructing facilities for first
6 occupancy after January 26, 1993, that aren't readily accessible to, and usable by,
7 individuals with disabilities when it was structurally practicable to do so. 42
8 U.S.C. § 12183(a)(1).

9 24. Here, Office Depot violated the ADA by designing or constructing
10 (or both) the Store in a manner that was not readily accessible to the physically
11 disabled public—including Rocca—when it was structurally practical to do so.¹

12 Failure to Make an Altered Facility Accessible

13 25. On information and belief, the Store was modified after January 26,
14 1992, independently triggering access requirements under the ADA.

15 26. The ADA also requires that facilities altered in a manner that affects
16 (or could affect) its usability must be made readily accessible to individuals with
17 disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering an
18 area that contains a facility's primary function also requires adding making the
19 paths of travel, bathrooms, telephones, and drinking fountains serving that area
20 accessible to the maximum extent feasible. *Id.*

21 27. Here, Office Depot altered the Store in a manner that violated the
22 ADA and was not readily accessible to the physically disabled public—including
23 Rocca—to the maximum extent feasible.

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28 ¹ Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a
private attorney general under either state or federal statutes.
Rocca v. Office Depot, Inc., et al.
Plaintiff's Complaint

Failure to Modify Existing Policies and Procedures

28. The ADA also requires reasonable modifications in policies, practices, or procedures, when necessary to afford such goods, services, facilities, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter their nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

29. Here, Office Depot violated the ADA by failing to make reasonable modifications in policies, practices, or procedures at the Store, when these modifications were necessary to afford (and would not fundamentally alter the nature of) these goods, services, facilities, or accommodations.

30. Rocca seeks all relief available under the ADA (*i.e.*, injunctive relief, attorney fees, costs, legal expense) for these aforementioned violations. 42 U.S.C. § 12205.

31. Rocca also seeks a finding from this Court (*i.e.*, declaratory relief) that Office Depot violated the ADA in order to pursue damages under California's Unruh Civil Rights Act or Disabled Persons Act.

VII. SECOND CLAIM

Disabled Persons Act

32. Rocca incorporates the allegations contained in paragraphs 1 through 30 for this claim.

33. California Civil Code § 54 states, in part, that: Individuals with disabilities have the same right as the general public to the full and free use of the streets, sidewalks, walkways, public buildings and facilities, and other public places.

34. California Civil Code § 54.1 also states, in part, that: Individuals with disabilities shall be entitled to full and equal access to accommodations,

1 facilities, telephone facilities, places of public accommodation, and other places
2 to which the general public is invited.

3 35. Both sections specifically incorporate (by reference) an individual's
4 rights under the ADA. See Civil Code §§ 54(c) and 54.1(d).

5 36. Here, Office Depot discriminated against the physically disabled
6 public—including Rocca—by denying them full and equal access to the Store.
7 Office Depot also violated Rocca's rights under the ADA, and, therefore,
8 infringed upon or violated (or both) Rocca's rights under the Disabled Persons
9 Act.

10 37. For each offense of the Disabled Persons Act, Rocca seeks actual
11 damages (both general and special damages), statutory minimum damages of one
12 thousand dollars (\$1,000), declaratory relief, and any other remedy available
13 under California Civil Code § 54.3.

14 38. He also seeks to enjoin Office Depot from violating the Disabled
15 Persons Act (and ADA) under California Civil Code § 55, and to recover
16 reasonable attorneys' fees and incurred under California Civil Code §§ 54.3 and
17 55.

18 VIII. THIRD CLAIM

19 Unruh Civil Rights Act

20 39. Rocca incorporates the allegations contained in paragraphs 1
21 through 30 for this claim.

22 40. California Civil Code § 51 states, in part, that: All persons within the
23 jurisdiction of this state are entitled to the full and equal accommodations,
24 advantages, facilities, privileges, or services in all business establishments of
25 every kind whatsoever.

1 50. Rocca alleges the Store is a public accommodation constructed,
2 altered, or repaired in a manner that violates Part 5.5 of the Health and Safety
3 Code or Government Code § 4450 (or both), and that the Store was not exempt
4 under Health and Safety Code § 19956.

5 51. Office Depot's non-compliance with these requirements at the Store
6 aggrieved (or potentially aggrieved) Rocca and other persons with physical
7 disabilities. Accordingly, he seeks injunctive relief and attorney fees pursuant to
8 Health and Safety Code § 19953.

9 X. PRAYER FOR RELIEF

10 WHEREFORE, Rocca prays judgment against Office Depot for:

11 1. Injunctive relief, preventive relief, or any other relief the Court
12 deems proper.

13 2. Declaratory relief that Office Depot violated the ADA for the
14 purposes of Unruh Act or Disabled Persons Act damages.

15 3. Statutory minimum damages under either sections 52(a) or 54.3(a)
16 of the California Civil Code (but not both) according to proof.

17 4. Attorneys' fees, litigation expenses, and costs of suit.²

18 5. Interest at the legal rate from the date of the filing of this action.

19
20 DATED: June 5, 2014

DISABLED ADVOCACY GROUP, APLC

21
22 /s/ Scottlynn J Hubbard IV

23 SCOTTLYNN J HUBBARD IV

24 Attorney for Plaintiff
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28 ² This includes attorneys' fees under California Code of Civil Procedure § 1021.5.
Rocca v. Office Depot, Inc., et al.
Plaintiff's Complaint